

SENATE BILL NO. 165

INTRODUCED BY MANGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONSUMER LOAN LAWS; PROVIDING THAT A CONSUMER OF A DEFERRED DEPOSIT LOAN OR A TITLE LOAN HAS THE RIGHT TO RESCISSION THROUGH THE FIRST BUSINESS DAY FOLLOWING THE EXECUTION OF THE LOAN AGREEMENT; ALLOWING ARBITRATION CLAUSES IN LOAN AGREEMENTS; ESTABLISHING FAIRNESS STANDARDS FOR MANDATORY ARBITRATION CLAUSES IN DEFERRED DEPOSIT LOAN AND TITLE LOAN AGREEMENTS; AND AMENDING SECTIONS 31-1-715 ~~AND~~ 31-1-723, AND 31-1-816, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 31-1-715, MCA, is amended to read:

"31-1-715. Loan requirements -- right of rescission -- arbitration. (1) Each deferred deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the fee allowed in 31-1-722(2), may not exceed \$300.

(3) The minimum amount of a deferred deposit loan is \$50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) (a) The loan agreement must contain a provision that the consumer may rescind the transaction if, by 5 p.m. of the licensee's first business day following the day that the loan was executed, the consumer provides the licensee with cash or certified funds equaling 100% of the amount loaned to the consumer.

(b) A licensee may not charge a consumer any fee or interest if the consumer rescinds the loan as provided in subsection (5)(a).

(c) Except as provided in subsection (5)(a), a consumer does not have a right to rescind the loan unless the licensee agrees to the rescission.

(6) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a consumer's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (6)(a).

1 ~~(5)(7)~~ Only the licensee may make an electronic deduction from the consumer's account. The licensee
2 shall ensure that information obtained from the consumer about the consumer's account remains confidential.

3 ~~(6)(8)~~ The licensee shall provide the consumer, or each consumer if there is more than one, with a copy
4 of the loan documents described in 31-1-721 upon consummation of the loan.

5 ~~(7)(9)~~ The holder or assignee of any check written by a consumer in connection with a deferred deposit
6 loan takes the instrument subject to all claims and defenses of the consumer."

7
8 **Section 2.** Section 31-1-723, MCA, is amended to read:

9 **"31-1-723. Prohibited acts.** A licensee making deferred deposit loans may not commit, or have
10 committed on behalf of the licensee, any of the following prohibited acts:

11 (1) engaging in the business of deferred deposit lending unless the department has first issued a valid
12 license;

13 (2) threatening to use or using a criminal process in this or any other state to collect on the loan made
14 to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally
15 available to creditors to collect on loans in default;

16 (3) altering the date or any other information on a check received from a consumer;

17 (4) altering or changing the date upon which the licensee and consumer agreed to make any electronic
18 deductions from the consumer's account unless the consumer agrees in writing to the change;

19 (5) making any false, misleading, or deceptive representation to a financial institution relating to a
20 consumer who has agreed to provide payment for a loan through an electronic deduction;

21 (6) using any device or agreement that would have the effect of charging or collecting more fees,
22 charges, or interest than those allowed by this part, including but not limited to entering into a different type of
23 transaction or renewing or rolling over a loan with the consumer;

24 (7) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit
25 loan;

26 (8) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether
27 a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to,
28 whether the amount of the loan exceeds 25% of the consumer's monthly net income.

29 (9) charging to cash a check representing the proceeds of the deferred deposit loan;

30 (10) charging to perform an electronic deduction or transaction to obtain the proceeds of the deferred

1 deposit loan;

2 (11) using or attempting to use the check provided by the consumer in a deferred deposit loan as
3 security for purposes of any state or federal law;

4 (12) using or attempting to use the consumer's authorization to deduct the amount set forth in the loan
5 agreement or any other information obtained from the consumer or the consumer's financial institution for any
6 purpose other than to collect the proceeds of the deferred deposit loan;

7 (13) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit
8 loan provided by the same licensee or any affiliate;

9 (14) making a deferred deposit loan that, when combined with another outstanding deferred deposit loan
10 owed to the licensee, exclusive of the fee allowed in 31-1-722(2), exceeds a total of \$300 when combining the
11 face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee
12 may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee.

13 (15) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of
14 another deferred deposit loan made to the same consumer. However, a licensee may without charge extend
15 the term of the loan beyond the due date.

16 (16) accepting any collateral for a deferred deposit loan;

17 (17) charging any interest, fees, or charges other than those specifically authorized by this part, including
18 but not limited to charges for insurance;

19 (18) threatening to take any action against a consumer that is prohibited by this part or making any
20 misleading or deceptive statements regarding the deferred deposit loan;

21 (19) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain
22 a license;

23 (20) including any of the following provisions in the loan agreement required by 31-1-721:

24 (a) a hold harmless clause;

25 (b) a confession of judgment clause;

26 (c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

27 ~~(d) a mandatory arbitration clause;~~

28 ~~(e)~~(d) any assignment of or order for payment of wages or other compensation for services;

29 ~~(f)~~(e) a provision in which the consumer agrees not to assert any claim or defense arising out of the
30 contract; or

1 ~~(g)(f)~~ a waiver of any provision of this part."

2
3 **SECTION 3. SECTION 31-1-816, MCA, IS AMENDED TO READ:**

4 **"31-1-816. Title loan requirements -- liability of borrower -- right of rescission -- arbitration. (1)**

5 Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to
6 the provisions of this part.

7 (2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement must
8 provide that:

9 (a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give
10 the title lender a security interest in unencumbered titled personal property owned by the borrower;

11 (b) the borrower consents to the title lender keeping possession of the certificate of title;

12 (c) (i) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money
13 in full and by complying with the title loan agreement for an agreed period of time;

14 (ii) the borrower may rescind the transaction if, by 5 p.m. of the title lender's first business day following
15 the day that the loan was executed, the borrower provides the title lender with cash or certified funds equaling
16 100% of the amount loaned to the borrower. A title lender may not charge a borrower any fee or interest if the
17 borrower rescinds the loan as provided in this subsection (2)(c)(ii). Except as provided in this subsection
18 (2)(c)(ii), a borrower does not have a right to rescind the loan unless the title lender agrees to the rescission.

19 (d) (i) the title lender may renew the title loan for additional 30-day periods beyond the original term
20 provided that beginning with the sixth extension or continuation, and for each subsequent extension or
21 continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of
22 the loan; and

23 (ii) if the borrower fails to reduce the principal amount as required by subsection (2)(d)(i), the title lender
24 may at its option:

25 (A) declare outstanding principal and any finance charges due and payable; or

26 (B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance
27 by 10%, with the understanding that that portion of the principal is still owed by the borrower but that portion of
28 the loan may not accrue interest or finance charges after that date;

29 (e) when the certificate of title is redeemed, the title lender shall release its security interest in the titled
30 personal property and return the personal property certificate of title to the borrower;

(f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal or subsequent renewals, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

(ii) the borrower shall deliver the titled personal property to the title lender in substantially the same condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

(g) if the borrower fails to deliver the titled personal property to the title lender, the title lender must be allowed to take possession of the titled personal property;

(h) upon obtaining possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in 31-1-820; and

(i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement.

(3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance with 61-3-103.

(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses incurred by the title lender in connection with the loan.

(5) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a borrower's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (5)(a)."

- END -